

REMARKS

Claims 1-5, 9-12, 15-18 are cancelled, claims 6, 7, and 13 are amended, and new claims 19-23 are added herein. Claims 6-8, 13-14 and 19-23 are presently pending herein. The amendments and new claims are fully supported by the original claims and specification. No new matter has been added herein. Applicants therefore respectfully request that the amendments be entered at this time.

In response to the restriction requirement, Applicants confirm the provisional election of group II, claims 6-14, made by Allan Fanucci on November 21, 2001, with traverse. Applicants expressly reserve the right to file one or more divisional or continuing applications to protect the inventions of the other disclosed, but unclaimed, subject matter prior to the issuance of this application.

The drawings were objected to by the draftsperson for the reasons set forth in the Draftsperson's review (form PTO 948). Applicants have submitted revised drawings on a separate paper with a transmittal letter addressed to the Official Draftsperson as required. Copies of these filings are attached hereto for the Examiner's convenience. In view of this, Applicants request that the objection be withdrawn.

Claim 14 was rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicants submit herewith a statement regarding the microorganism deposits made under the terms of the Budapest Treaty, stating therein that all restrictions on availability to the public of the deposited materials will be irrevocably removed upon issuance of the patent. A signed copy of the Statement Regarding Microorganism Deposit Under The Terms Of The Budapest Treaty is attached, with copies of the receipts of original deposits also attached. In view of these submissions, Applicants respectfully request that this rejection be withdrawn.

Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention.

Specifically, claim 7 was rejected for the recitation of the term "conventional industrial baker's yeast" as set forth in the last line of the claim. Applicants have amended the claims so that this term is no longer used. Claim 7 was also rejected for the term "sporulated

tetraploid zygote." To help clarify the misunderstanding, Applicants point the Examiner to the Specification of the present application, specifically at paragraphs [0045-49] of US Publication 2002/004243. The specification clarifies that the sporulated tetraploid produces diploid segregates being homozygous for a particular trait. Applicants are not attempting to cover "a haploid yeast strain generated by sporulation" as suggested by the Examiner. Also, to further clarify this point, Applicants have amended claim 7 to avoid any potential confusion.

Claim 8 was rejected for the recitation of the term "diploid" in reference to claim 7, which recites that the yeast is tetraploid. The Examiner states that "[i]t is unclear how a strain can be both tetraploid and diploid at the same time" Applicants again direct the Examiner to the specification of the presently pending application, at paragraph [0049], wherein it states "[a]lthough not required, the diploid strains obtained by following the method of the invention may be further polyploidized . . . Polyploidized strains have an additional industrial advantage of easier filtering because of their enlarged size." In view of the specification it is clear that while diploid strains are obtained from the sporulated tetraploid, the diploid strains can be further polyploidized if desired.

Claims 9 and 11 have been cancelled.

In view of the above amendments and comments, Applicants respectfully request that the rejection based 35 U.S.C. 112, second paragraph be withdrawn.

Claims 6-9 were rejected under 35 U.S.C. 102(b) as being anticipated by Gysler et al., U.S. Patent No. 5,399,492 ("Gysler").

Gysler teaches a method of obtaining yeast strains having an lti property. The process involves mutagenesis of a baker's yeast strain using, for example, ethyl methanesulfonate or ICR-70, followed by selection of yeast strains with the desired property. Gysler fails to disclose a modified industrial baker's yeast having a low temperature inactive (lti)-property characterized by having a CO₂ production of less than about 1 ml/g dough per hour at refrigeration temperatures from about 3° C. to 12° C., wherein the baker's yeast is derived from a sporulated tetraploid zygote yeast or a method producing such a yeast as presently claimed, without using a mutagene.

In addition, Gysler does not make any reference to a strain having the specific characteristics of FCL 313 (NCIMB 41002), CL14 (NCIMB 41032), or CL18 (NCIMB 41033) as required by new claim 19.

In view of the deficiencies of the prior art, Applicants respectfully request that this rejection also be withdrawn.

Claims 6-9 were rejected under 35 U.S.C. 102(e) as being anticipated by Takano et al., U.S. Patent No. 6,410,303 ("Takano").

Takano discloses a diploid or higher polyploid, baker's yeast with good frozen dough resistance, produced with one or more NTH1 gene-disrupted. Takano does not disclose the presently claimed invention. Takano makes no reference or suggestion to a modified industrial baker's yeast having a low temperature inactive (lti)-property characterized by having a CO₂ production of less than about 1 ml/g dough per hour at refrigeration temperatures from about 3° C. to 12° C., wherein the baker's yeast is derived from a sporulated tetraploid zygote yeast. Furthermore, Takano does not teach a method producing such a yeast.

Based on Takano's lack of disclosure, Takano cannot anticipate the presently claimed invention. Therefore, Applicants respectfully request that this rejection be withdrawn.

Accordingly, the entire application should be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree with the Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

Respectfully submitted,

Date

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